92-1323

Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

October Term, 1992

UNITED TRANSPORTATION UNION,

Petitioner,

vs.

CUYAHOGA VALLEY RAILWAY COMPANY,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Supreme Court of the United States should grant a Petition for Writ of Certiorari solely to reapply undisputed facts to well-established and recognized judicial precedent regarding the classification of a major dispute under the Railway Labor Act, 45 U.S.C. § 151 *et seq.*, as appropriately decided by the United States Court of Appeals for the Sixth Circuit affirming the opinion of the United States District Court for the Northern District of Ohio.

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STATEMENT OF THE CASE

Petitioner United Transportation Union ("UTU") filed an action in the United States District Court for the Northern District of Ohio seeking to set aside the award of the Public Law Board (the "Board") denying jurisdiction over its dispute with respondent Cuyahoga Valley Railway Company (the "Carrier"). The Board correctly denied jurisdiction on the basis the dispute did not involve contract interpretation, but rather involved the Carrier's alleged refusal to bargain. The United States District Court for the Northern District of Ohio and the United States Court of Appeals for the Sixth Circuit agreed that the UTU's dispute alleged the Carrier's failure to bargain with the UTU and presented a challenge to the validity of an agreement negotiated between Carrier and a separate union, the United Steelworkers of America (the "Steelworkers"), and, thus, is a major dispute outside the jurisdiction of the Board. (*See* App. 1-8, App. 10-18 to Petition for Writ of Certiorari).[1]

SUMMARY OF ARGUMENT

This case presents neither an important statutory issue nor a conflict between any United States Court of Appeals. As there are no issues of material fact nor any questions as to the applicable law, this case presents only petitioner's request that the Supreme Court of the United States repeat the Sixth Circuit's task of applying particular facts to the law. The Sixth Circuit appropriately applied the undisputed facts of the present case to well-established and recognized judicial precedent regarding major and minor disputes

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1. The UTU represents three of the four departments in the Carrier's diesel shop, whereas the Car Department employees are represented by the Steelworkers. The Carrier was statutorily required to bargain with the Steelworkers over terms and conditions of employment relative to Car Department employees for whom it is the exclusive bargaining representative.

under the Railway Labor Act (the "RLA"). The Sixth Circuit properly determined that the facts in the present case supported a finding of a major dispute which was outside the jurisdiction of the Public Law Board. For the foregoing reasons, petitioner's Petition for Writ of Certiorari fails to meet the requirements for a grant of such review and must be denied.

REASONS FOR DENYING THE WRIT

I.

THE SIXTH CIRCUIT APPLIED APPROPRIATE JUDICIAL PRECEDENT TO THE PARTICULAR FACTS OF THE PRESENT CASE.

In the present case, there are no issues of material fact, nor are there questions as to applicable law. Under the Railway Labor Act, minor disputes are within the jurisdiction of the Public Law Board ("the Board"), while major disputes are to be decided by the Court. *See generally Consolidated Rail Corp. v. Railway Labor Executives' Ass'n,* 491 U.S. 299 (1989); *Elgin, Joliet & Eastern Railway Co. v. Burley,* 325 U.S. 711 (1945). In *Consolidated Rail,* the Supreme Court clarified the standard for determining whether a dispute is major or minor under the Act:

> The formal demarcation line between major and minor disputes . . . looks to *whether a claim has been made that the terms of the existing agreement either establish or refute the presence of a right to take the disputed action.* The distinguishing feature of such a case is that *the dispute may be conclusively resolved by interpreting the existing agreement.*

Id. at 305 (emphasis added). This Court described a minor dispute as one where the Carrier asserts its actions are "arguably justified by the terms of the parties' collective bargaining agreement." *Id.* at 307.[2] Thus, for a dispute to be minor under the RLA, a claim must be made that the Carrier's actions are arguably justified by the terms of the agreement, and the dispute must be able to be conclusively resolved by interpreting the agreement. *Id.* at 305-07. *See also Sheet Metal Workers' Int'l Ass'n v. Burlington Northern Railroad Co.*, 893 F.2d 199, 204 (8th Cir. 1990) ("dispute may be conclusively resolved by interpreting the scope clause of the existing collective bargaining agreement [between the parties]. . . . Accordingly, the dispute is minor."); *Air Line Pilots Ass'n v. Eastern Air Lines, Inc.*, 869 F.2d 1518, 1522 (D.C. Cir. 1989) (similarly).

In the present case, neither the UTU nor Carrier asserted the alleged unilateral change of seniority rights of employees outside of the Car Department was arguably justified by the UTU's collective bargaining agreement. Rather, the Carrier's actions were supported by its statutory duty to bargain with the Steelworkers as the exclusive bargaining representative of the Car Department employees regarding Car Department rights.

Moreover, there are no conflicting collective bargaining agreement provisions which trigger this dispute and it cannot be conclusively resolved by interpreting any agreement. The dispute in the present case, as recognized by the Sixth Circuit, is not the applicability or interpretation of either the UTU or the Steelworkers' agreement, but the fact that the Carrier negotiated

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2. Pre-*Consolidated Rail* cases in the Sixth Circuit support its holding. *See, e.g., International Longshoremen's Ass'n, Local 158 v. Toledo Lakefront Dock & Pellet Co.*, 776 F.2d 1341, 1343 (6th Cir. 1985); *Brotherhood Railway Carmen v. Norfolk and Western Railway Co.*, 745 F.2d 370, 375 (6th Cir. 1984); *Local 1477 United Transp. Union v. Baker*, 482 F.2d 228, 230 (6th Cir. 1973).

Car Department seniority rights with their exclusive bargaining representative, the Steelworkers. (App. 7-8).

Unlike *Order of Railway Conductors of America v. Pitney,* 326 U.S. 561 (1946) and *Transportation Communication Employees v. Union Pacific R.R.,* 385 U.S. 157 (1966) as urged by petitioner, the present case has nothing to do with assignment of work or a jurisdictional dispute between two unions. This case involves the exclusive representative of Car Department employees which has negotiated Car Department rights that are *solely* Car Department rights. The UTU's challenge is to the alleged refusal of the Carrier to bargain with it regarding Car Department rights which are within the sole representational jurisdiction of the Steelworkers.

Finally, contrary to petitioner's suggestion, *Atchison, Topeka and Santa Fe Railway Co. v. United Transportation Union,* 734 F.2d 317 (7th Cir. 1984) is distinguishable and presents no conflict between courts of appeal. In *Santa Fe,* from the onset of its dispute, the Firemen's union *specifically argued the agreement between the Engineers' union and the carrier violated existing agreements between the Firemen and the carrier.* The UTU, contrary to *Santa Fe* and *Consolidated Rail,* failed to characterize its dispute as anything except a dispute relating to an alleged refusal to bargain and violation of the status quo. The UTU's challenge is to the Carrier's bargaining with the Steelworkers, not to an interpretation of any agreement. For the foregoing reasons, the Sixth Circuit properly affirmed the decision of the district court and found the UTU's dispute was major under the Railway Labor Act.

II.

THE SIXTH CIRCUIT PROPERLY FOUND THE UTU'S CHALLENGE TO THE VALIDITY OF THE STEELWORKERS' AGREEMENT WAS A MAJOR DISPUTE.

A challenge to the validity of an agreement, such as the one asserted by the UTU, is within the exclusive jurisdiction of the district court under the RLA. *Brotherhood of Railroad Trainmen v. Smith*, 251 F.2d 282 (6th Cir. 1958).[3] In *Smith*, the Sixth Circuit resolved a similar dispute where the carrier negotiated a union shop agreement with the Trainmen's union and a collective bargaining agreement with the Conductor's union. The Conductor's union brought an action in federal court seeking injunctive relief against the Trainmen's agreement because it allegedly destroyed the Conductor's seniority rights contained in its collective bargaining agreement. The district court asserted jurisdiction and found the dispute did not involve the interpretation or application of the Conductor's agreement, but rather presented a challenge to the validity of the Trainmen's agreement. *Id.* at 284.

The Sixth Circuit also rejected the Trainmen's assertion that the dispute was within the jurisdiction of the National Railroad Adjustment Board:

> Since the issue is the *validity* and not the meaning of the contract, the court has jurisdiction. . . .
>
> The question posed is whether, under the

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3. Indeed, the Seventh Circuit has held similarly that a challenge to validity of collective bargaining agreement between carrier and other employees is a request to bargain and, thus, a major dispute under the Railway Labor Act. *See Air Line Pilots Ass'n v. United Air Lines*, 874 F.2d 439, 444 (7th Cir. 1989).

> Railway Labor Act, which authorizes a union shop agreement between a labor organization and a railroad as to the "craft or class" represented by the labor organization, action can be taken *cutting off seniority rights of employees in a different craft or class covered by a separate bargaining agreement.* . . . The administrative boards set up under the Act have no jurisdiction to determine such a question.

Id. at 286 (emphasis added). Instead, the Sixth Circuit specifically held that a challenge to the validity of an agreement was within the jurisdiction of the district court. *Id.*

Like the Conductor's union in *Smith*, the UTU challenges the validity of the Steelworkers' agreement. It has been the UTU's position from the onset of its dispute that the provisions of the Steelworkers' agreement are invalid as applied to employees represented by the UTU. The Sixth Circuit properly found the UTU's challenge to the validity of the Steelworkers' agreement is a major dispute outside the Board's jurisdiction under the Railway Labor Act.

The present case is also squarely on point with *Order of Railway Conductors and Brakemen v. Switchmen's Union of North America*, 269 F.2d 726 (5th Cir. 1959) where a union challenged the validity of a contract entered between the carrier and another union. In *Switchmen's Union*, the BRT was the original agent for Yardmen as well as for Trainmen. After an election, SUNA was certified to represent Yardmen, while the BRT continued to represent Trainmen. The BRT had previously negotiated an agreement granting Roadmen (Trainmen and Conductors) considerable rights to perform yard work. After SUNA became the bargaining representative of the Yardmen, it negotiated an agreement with the carrier to give all yard work to Yardmen only.

However, Roadmen who were conducting yard work were given the opportunity to become Yardmen. *Id.* at 730.

When the BRT challenged SUNA's agreement, the court found the only representative with whom the carrier could bargain regarding yard work was SUNA. *Id.* (citing *Brotherhood of Railroad Trainmen v. Smith,* 251 F.2d 282 (6th Cir. 1958)). Because SUNA held the exclusive right to bargain regarding all yard work, the court held SUNA represented everyone performing yard work, including Roadmen who had performed yard work. *Id.* at 731-32. The court held the BRT's challenge was not to the interpretation of an agreement, but rather to the validity of SUNA's agreement which was a major dispute.

Likewise, in the present case, the Steelworkers originally represented four of Carrier's departments. After an election, the Steelworkers remained the exclusive bargaining representative of the Car Department while the UTU took over as representative for the other three departments. The Steelworkers, then, within its exclusive bargaining power, negotiated Car Department rights, much like SUNA negotiated regarding yard work. UTU members who held Car Department seniority were given the opportunity to return to the Car Department, as were BRT members who had performed yard work. The UTU has no control over and cannot bargain regarding Car Department work, the same as the BRT could not bargain regarding yard work. There is no interpretation or application of an agreement in the present case. The UTU's demand to represent its members regarding Car Department matters, over which the Steelworkers are the exclusive bargaining representative, is a challenge to the validity of the Steelworkers' agreement and a major dispute.

Finally, in *Brotherhood of Railroad Trainmen v. Howard,* 343 U.S. 768 (1952), this Court held a challenge to the *validity* of an agreement is a major dispute. In *Howard,* the brakemen's union

negotiated an agreement whereby the carrier agreed to disallow train porters from performing brakemen duties. Train porters, who had been performing brakemen duties, were discharged and replaced by brakemen. The train porters brought an action challenging the validity of the brakemen's agreement with the carrier, which the court found was a major dispute within the jurisdiction of the court. As in *Howard,* the UTU challenges the validity of the Steelworkers' agreement as it affects its employees who previously held seniority rights in the Car Department. Accordingly, the Sixth Circuit properly held the UTU's challenge to the validity of the Steelworkers' agreement was a major dispute within the jurisdiction of the court, not the Board.

CONCLUSION

Respondent Cuyahoga Valley Railway Company respectfully requests the Supreme Court of the United States to deny petitioner's Petition for Writ of Certiorari.

Respectfully submitted,

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